

Structures and Buildings Allowances – Publication of Draft Legislation

21 March 2019

BACKGROUND

A new Structures and Buildings Allowance (SBA) was announced in the Autumn Budget 2018, at which time a Technical Note was published setting out in some detail what was proposed. Since then, HMRC have been in discussions with various interested parties, and as a result there have been some small changes to the proposed relief. HMRC have now published draft legislation which, subject to further consultation, will be inserted into the Capital Allowances Act 2001 as Part 2A.

THE BASIS OF THE RELIEF

The relief will apply to the construction, conversion or renovation of commercial structures and buildings started on or after 29 October 2018 where qualifying expenditure is incurred on or after that date. Relief will be available once the structure or building has been brought into qualifying use, and will be given on a straight line basis at 2% a year, apportioned for periods of less than 12 months.

The relief ceases to be available where the structure or building is brought into residential use or is demolished.

Construction is treated as beginning before 29 October 2018 if any contract for the construction has been entered into before that date, or if the contract has been entered into on or after that date but a connected preparatory contract was entered into before that date. These provisions prevent relief being obtained by shifting the contract date.

QUALIFYING EXPENDITURE

Expenditure is qualifying if it is capital expenditure on the construction of a building or structure and the relevant interest in the building or structure has not been sold, or it has been brought into use before being sold.

Where a building or structure is sold, otherwise than by a developer, unused qualifying expenditure in respect of which the purchaser can claim relief is the lesser of the capital sum paid by the purchaser for the relevant interest, and the capital expenditure incurred by the vendor on the construction.

Where a developer incurs expenditure on the construction of a structure or building and sells it before it is first used, qualifying expenditure for the purchaser will be the capital sum paid by the purchaser for the relevant interest. Where a

developer sells a structure or building after it has been used, qualifying expenditure will be the expenditure on the construction.

Expenditure on renovation, conversion or repairs incidental to the renovation, and expenditure incurred on site preparation in relation to the construction of the building or structure are to be treated as expenditure on construction of the building or structure.

Clearly, if the expenditure is revenue in nature a full deduction would be available against profits, and such expenditure would not also form part of a claim for SBA.

There are provisions to ensure that when additional VAT liabilities are incurred in respect of qualifying expenditure, relief can be claimed, starting with the period in which the additional liability is incurred. There are mirroring provisions where there is a VAT rebate in relation to qualifying expenditure.

Where expenditure is partly qualifying a just and reasonable apportionment can be made.

There is a statutory requirement that expenditure is evidenced, and where suitable evidence cannot be provided the expenditure is taken to be nil.

When the building or structure is brought into use 2% of qualifying expenditure, subject to any apportionment for non-qualifying use, can be claimed each year. If the building or structure is subsequently sold, the new owner can continue to claim the relief, effectively where the vendor left off, without any balancing allowance or charge.

In order to ensure that this functions correctly, the legislation requires the preparation of an “allowance statement” which must include a written statement of the following:

- The date of the earliest written contract for the construction of the building or structure,
- The amount of qualifying expenditure incurred on its construction or purchase,
- The date on which the building or structure is first brought into non-residential use, and
- Such other supplementary information as may reasonably be required by HMRC.

Without this allowance statement no relief can be claimed.

EXCLUDED EXPENDITURE

Excluded expenditure includes expenditure on:

- The acquisition of land or rights over land;
- The alteration of land, including land reclamation, remediation and landscaping;
- Seeking planning consent;
- Fees, stamp duty and other incidental costs attributable to the acquisition;
- Capital expenditure that exceeds the market value of the interest acquired or the amount of works, services or other matters to which the expenditure relates;
- Capital expenditure on the provision of plant or machinery.

Expenditure on plant and machinery is likely to qualify for capital allowances under the integral features provisions, in respect of which annual investment allowance (AIA) may be available.

QUALIFYING ACTIVITIES

Relief can be claimed for qualifying expenditure on a building or structure when it is brought into use for a qualifying activity, which includes:

- A trade,
- A UK or overseas property business
- A profession or vocation
- A mine, quarry or other concerns
- Managing the investments of a company with investment business,

But only to the extent that the profits or gains from the activity are chargeable to tax in the UK.

QUALIFYING USE

A building or structure is in qualifying use if it is in non-residential use for the purposes of a qualifying activity carried out by the person with the relevant interest in the building or structure. However, where the qualifying use is insignificant, relief will not be available. Where there is mixed use there will be a just and reasonable apportionment. Residential use is excluded from the relief, and includes:

- A dwelling-house,
- Residential accommodation for school pupils,
- Student accommodation,
- Residential accommodation for members of the armed forces,

- A home or other institution providing residential accommodation except where the accommodation is provided with personal care for persons needing care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,
- A prison or similar establishment.

RELEVANT INTEREST

The general rule is that the relevant interest in relation to any qualifying expenditure is the interest in the building or structure to which the person who incurred the expenditure was entitled when the expenditure was incurred. Where the person has more than one interest the reversionary interest is the relevant interest.

Where a person incurs expenditure on the construction of a building or structure and is entitled to an interest in the building or structure on or as a result of the construction, that person is treated as having had that interest when the expenditure was incurred.

An interest does not cease to be the relevant interest because of the creation of a lease or other interest out of that interest, unless a lease exceeding 35 years is created, where there are special rules.

Where a lease of 35 years or more is granted out of the interest in relation to the qualifying expenditure, and the market value of the retained interest in the building or structure is less than 1/3 of the capital sum given as consideration for the lease, the lease is treated as acquiring the relevant interest in the building or structure on the grant of the lease. The capital sum excludes the amount of any premium that is taxed as an income receipt for the lessor.

On expiry of the lease the lessor is treated as acquiring the relevant interest from the lessee. This means that the lessee is entitled to the relief for the duration of the lease.

Where the lease is merged with a superior interest and thereby extinguished, the interest into which the lease merges becomes the relevant interest.

OTHER PROVISIONS

Anti-avoidance provisions, where any avoidance arrangements have given rise to a tax advantage, that tax advantage will be countered by making such adjustments as are just and reasonable.

There are also provisions dealing with co-ownership schemes, long-term businesses, highway undertakings, and research and development activities.

CONCLUSION

The relief has some similarities with industrial buildings allowance (IBA) which was available until 2011, although the new SBA applies to a wider range of commercial structures, essentially applying to any structure that is not a dwelling and in respect of which capital allowances cannot otherwise be claimed.

The relief is spread over 50 years, which is probably longer than the expected useful life of many commercial buildings and structures. Nevertheless, the relief is intended to encourage investment in UK commercial infrastructure and does provide a welcome relief for qualifying expenditure on such assets.

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